IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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UNITED STATES OF AMERICA,                       :
                                                :
                Plaintiff,                      :   CRIMINAL NO: 2:19-cr-00064-JLS-1
        v.                                      :
                                                :
JOHN DOUGHERTY,                                 :
                                                :
                Defendant.                      :
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NOTICE OF SUPPLEMENTAL AUTHORITY IN FURTHER SUPPORT OF DEFENDANT JOHN DOUGHERTY'S MOTION TO DISMISS COUNTS 97 – 109 OF THE INDICTMENT

Defendant, John Dougherty, hereby submits as supplemental authority in further support of his pending Motion to Dismiss Counts 97 – 109 of the Indictment (the "Motion," Dkt. No. 65), the opinion of the Second Circuit in *United States v. Silver*, No. 1802380 (2d. Cir. Jan. 20, 2020) (attached hereto as Exhibit 1), which analyzes the standards for proving the bribery theory of honest services fraud under 18 U.S.C. § 1346 following the United States Supreme Court's decision in *McDonnell v. United States*, 136 S.Ct. 2355 (2016). In the *Silver* Opinion, the Second Circuit held that, following the *McDonnell* decision, in order to prove the "as opportunities arise" theory of honest services fraud bribery – referred to as the "retainer" or "stream of benefits" theory in the Third Circuit – the government must prove that a charged payment to a public official was made with the specific intent to influence official acts on specific questions or matters arising before the public official. Thus, the *Silver* opinion further supports Defendant's argument in the Motion that the government has failed to allege a cognizable theory of honest services fraud because the government has failed to allege that defendant made any payments to a public official with the specific intent to influence official action on specific questions or matters.

Dated: January 29, 2020

 /s/ Terence M. Grugan_____
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